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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/322,875	05/28/1999	AVI J. ASHKENAZI	11669.19US03	8566

7590 04/11/2003

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EXAMINER

DECLoux, AMY M

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 04/11/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/322,875

Applicant(s)

ASHKENAZI ET AL.

Examiner

Amy M. DeCloux

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 05 March 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☒ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 13-18.Claim(s) objected to: 11 and 12.Claim(s) rejected: 1-10, 20-21, 23-24, 33-55.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☒ The proposed drawing correction filed on 05 March 2003 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 24, 25 and 30.
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because: Applicant traverses the art rejections for the reasons as stated in Applicant's previous response. It is Applicant's position that neither the Ni et al. reference nor the Pan et al reference provide enabling disclosures for the claimed anti-DR antibodies. Applicant has attached an office action dated 11-26-01, from the publically available file history of Ni et al US Patent 6,461,823, which is a divisional of the Ni et al US Patent 6,342,363 ('363 is the referenced art in the instant rejection). It is noted that said office action is evidentiary data which is newly presented after a final rejection and as such does not have to be considered. However, said office action asserts that agonist or antagonist antibodies to DR4 are not enabled, and asserts that making an antibody that inhibits or stimulates the activity of the protein to which it binds is unpredictable and complex even if the regions of activity in the protein are known. However, the examiner of the instant case notes that the office policy is that claims to agonistic and antagonist antibodies are okay without actual reduction to practice IF you know the receptor, ligand and testable function (e.g., apoptosis). There is no problem with enablement or written description in these instances. Therefore, the instant examiner notes that accordingly the Ni and Pan references are enabling, and as such the 103 art rejections are maintained essentially for the reasons of record. Further, it is noted that in 103 rejections, the main issue is whether would one have had a reasonable expectation of success in view of the combined teachings of the references, as opposed to the issue of whether the individual references standing alone are enabling references.

*Pat J. Nolan*  
PATRICK J. NOLAN, PH.D.  
PRIMARY EXAMINER

4/11/03